

DIVISION OF JUVENILE JUSTICE

Policy, Procedures, Programs And Regulations
P.O. Box 942883
Sacramento, CA 94283-0001



March 30, 2007

**Title 15, California Code of Regulations,
Division 4, Chapter 1, Article 3**

NOTICE OF MODIFIED TEXT – USE OF FORCE

The full text of the proposed regulation is provided in its original underline and strikethrough format.

Additional or reinstated text is indicated by **bold double underline** and additional deleted text is indicated by **bold ~~double strikethrough~~**.

The 15-day comment period on these modifications shall close on April 16, 2007. Submit written comments to Sonja Dame, Division of Juvenile Justice, 4241 Williamsborough Drive, Sacramento, California, 95823; FAX (916) 262-2608; or e-mail: sdame@cya.ca.gov before the close of the public comment period. Comments must be received no later than 5:00 p.m., April 16, 2007

Only those comments relating directly to the modifications indicated by **bold double underline** and **bold ~~double strikethrough~~** will be considered.

After considering all timely and relevant comments received during the 45-day public comment period, the California Department of Corrections and Rehabilitation, Division of Juvenile Justice proposes the following modifications to the originally proposed text:

§ 4034.0 Use of Force Policy.

(a) The California Department of Corrections and Rehabilitation, Division of Juvenile Justice shall operate under this Use of Force Policy that defines staff responsibilities and limitations concerning the use of force (while still allowing discretion in the appropriate application of force).

(b) The policy identifies for staff when and how much force departmental peace officers are trained in regarding the proper use of force. It ensures supervision, monitoring, and evaluation of force deployment. It further ensures discipline is imposed for violations of the Use of Force Policy, procedures, or training.

(c) At no time are staff permitted to use force against a ward for punishment, retaliation, or discipline.

NOTE: Authority cited: Sections 1712, 1752, Welfare and Institutions Code. Reference: Section 1752, Welfare and Institutions Code; and Sections 147, 149, 830.5, 835, and 843, Penal Code.

§ 4034.1 Definitions.

(a) Use of Force

Force used by an objective, trained, and competent Correctional Peace Officer, faced with similar facts and circumstances, to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order.

(ab) Reasonable Force

The amount of force that an objective, trained, and competent Correctional Peace Officer, faced with similar facts and circumstances, would consider necessary and reasonable to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order.

(bc) Unnecessary Force

The use of force that an objective, trained, and competent Correctional Peace Officer, faced with similar facts and circumstances, would consider unnecessary to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order.

(ed) Excessive Force

The use of more force than an objective, trained, and competent Correctional Peace Officer, faced with similar facts and circumstances, would use to subdue an attacker, overcome resistance, effect custody, or gain compliance with a lawful order.

(de) Deadly Force

Any use of force that is likely to result in death.

(ef) Great Bodily Injury

An injury that creates a substantial risk of death.

(fg) Non-Deadly Force

A use of force option, as defined in Section 4034.2, subsection (b), which is greater than verbal persuasion but less than force that is likely to result in death.

NOTE: Authority cited: Sections 1712 and 1752, Welfare and Institutions Code. Reference: Section 1752, Welfare and Institutions Code; and Sections 147, 149, 830.5, 835, and 843, Penal Code.

4034.2 Use of Force Options.

(a) For the purposes of this section, "Use of Force Options" refers to the choices available to an employee when selecting a reasonable force option.

(b) The choices include but are not limited to: dialogue or verbal persuasion, chemical restraint, physical strengths and holds, mechanical restraint, less-lethal weapons and firearms.

(1) For the purposes of this section, "less-lethal weapon" refers to a peace officer's use of departmentally-approved security equipment, which includes weapons used to fire less-lethal projectiles.

(2) For the purposes of this section, a "firearm" refers to a peace officer's use of departmentally-approved firearms, which include weapons used to fire lethal projectiles.

(c) Force shall be used only when reasonably necessary to subdue an attacker, overcome resistance, effect custody, or to gain compliance with a lawful order. It is the policy of the California Department of Corrections and Rehabilitation, Division of Juvenile Justice to accomplish the educational, treatment and supervision functions with minimal reliance on the use of force. Employees may use reasonable force as required in the performance of their duties, but unnecessary or excessive force shall not be used. If staff, at any point, determines the situation can be resolved without any further use of force, staff shall terminate the use of force.

(d) Any employee observing unnecessary or excessive force shall attempt to stop the violation and immediately report it to the Watch Commander verbally and follow up with a written report of their observations prior to leaving the facility.

(e) An employee shall not use any type of force against a ward, including chemical or mechanical restraint as punishment, retaliation, or for disciplinary purposes.

(f) The Division recognizes the sanctity of human life. Therefore, deadly force shall only be used when it is reasonable force and is needed to defend the employee or other persons from the immediate threat of death or great bodily injury.

(g) A firearm shall not be discharged if there is reason to believe that persons other than the intended target will be injured.

NOTE: Authority cited: Sections 1712, 1752, Welfare and Institutions Code. Reference: Section 1752, Welfare and Institutions Code; and Sections 147, 149, 830.5, 835, and 843, Penal Code.

§ 4034.3 Reporting and Monitoring of Force.

(a) Reporting Non-Deadly Force.

(1) An employee who observes non-deadly force shall document that fact by preparing and submitting a Behavior Report form DJJ (YA) 8.403 (Rev. 08/06), incorporated by reference. An employee who uses non-deadly force shall document that fact by preparing and submitting a Behavior Report form DJJ (YA) 8.403 (Rev. 08/06) and a Use of Force form DJJ (YA) 8.412 (Rev. 08/06), incorporated by reference. The forms shall identify any witnesses to the incident and describe the circumstances giving rise to the use of force, and the nature and extent of the force used. The employee shall provide the form or forms to his or her on-duty supervisor prior to leaving the facility. **If an employee is unable to provide his or her forms prior to leaving the facility due to an injury, the employee shall dictate the information in person or via telephone to a peace officer supervisor who shall complete the forms.**

(2) The employee's on-duty supervisor shall review the forms to ensure that they are adequately prepared and to reach a judgment concerning the appropriateness of the force used. The supervisor shall document his or her conclusions and forward them with the employee's documents through the designated chain-of-command, to the institutional head for approval or follow-up action.

(b) Monitoring of Non-Deadly Force.

(1) All use of force shall be reviewed at a supervisory level **within 24 hours of the incident.** The following factors must be evaluated: the extent of the injury suffered, the need for the application of force, the relationship between that need and the amount of force used, the threat reasonably perceived by the responsible officials, and any efforts made to temper the severity of the force used.

(2) On at least a monthly basis, the Institutional Force Review Committee (IFRC) and the Regional Parole Force Review Committee (RPFRC) shall meet to review all completed use of force incidents after critique by area managers. The IFRC/RPFRC shall examine all levels of responsibility exercised by subordinate managers and supervisors, and ensure the appropriateness of completed documentation. The IFRC/RPFRC shall make a determination concerning the appropriateness of the use of force, based on the information and reports available. The Superintendent/ Assistant Superintendent shall personally view all videotapes arising from use of force incidents.

(A) IFRC is a team tasked with evaluating and monitoring the use of force incidents and is comprised of the Superintendent/Assistant Superintendent, Chief of Security, and at least one other manager (TTS/Lieutenant/Program Administrator) selected on a rotational basis. Additionally, other staff may attend as guests to observe the process.

(B) RPFRC is a team tasked with evaluating and monitoring the use of force incidents and is comprised of the Deputy Regional Administrator, a Parole Agent III (Program Specialist), and at least one other manager (Supervising Parole Agent III or Supervising Parole Agent II,

selected on a rotational basis) of the Parole Services and Community Corrections Branch. Additionally, other staff may attend as guests to observe the process.

(3) The Department Force Review Committee (DFRC), designated by the Chief Deputy Secretary, shall review incidents of use of force to ensure staff's actions are in accordance with Use of Force Policy, procedure, and training. The institution and parole executives shall conduct qualitative analysis of each use-of-force incident. For the purposes of this section, qualitative analysis refers to an analysis of the type and necessity of force used in each use-of-force incident.

(4) The Division's Compliance Unit shall be responsible for conducting audits of the Division's use of force incidents.

(c) Reporting Deadly Force.

(1) An employee who uses deadly force, whether on or off-duty, shall ensure that a supervisory employee is notified of the incident without delay. At the time of notification, the employee shall give an oral Public Safety Statement to the supervisor who will capture the essence of the oral statement in writing and submit it to the Watch Commander. For the purposes of this section, a Public Safety Statement is an oral statement to help determine the general circumstances of the incident, assess the nature and extent of the scene that needs to be controlled, evaluate the need for additional resources and notifications, set the perimeter, locate injured persons, and determine the nature of evidence to be sought. The Public Safety Statement shall not include, and the employee shall not be asked to provide, a step-by-step narrative of the incident or a motive for his or her actions.

(2) An employee who observes deadly force shall document their observations in a memo and submit the memo to his or her supervisor prior to leaving the facility.

(3) The supervisor shall ensure that the chain-of-command **and outside law enforcement are** ~~is~~ notified and all necessary health and safety, medical and security measures are initiated. If the incident is in an institution/facility, the supervisor shall go to the location and ensure that the crime scene is protected for preservation of life and evidence.

(4) The manager of the Office of Internal Affairs, or designee, shall designate an employee to be in charge of the investigation. The employee shall go to and take charge of the scene. The employee shall assemble the appropriate investigative staff and ensure that all necessary investigative procedures and coordination with affected law enforcement entities are accomplished. The product of the investigation will be a report to the Chief Deputy Secretary with a conclusion concerning the extent to which the use of force did or did not comply with the law. However, when deadly force is used in a non-departmental location, local law enforcement shall take charge of the scene.

(d) Monitoring of Deadly Force.

(1) Deadly Force Review Board (DFRB) shall be convened as soon as possible after the investigation is completed.

(A) The Chief Deputy Secretary or designee shall designate the members of the DFRB.

(B) The DFRB shall be composed of at least four members **trained in accordance with Section 832 of the Penal Code**. One shall be either the Director of the Division of Juvenile Facilities, or the Regional Parole Administrator outside the region or jurisdiction where the deadly force was used. The remaining three members shall be non-departmental law enforcement professionals.

(C) The DFRB shall examine all aspects of the incident to determine the extent to which the use of force complied with departmental policies and procedures, and to determine the need for policy, training and/or equipment modifications. The DFRB shall report its findings, in writing, to the Chief Deputy Secretary for approval or follow-up action.

NOTE: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Section 1752, Welfare and Institutions Code; and Sections 147, 149, and 830.5, Penal Code.

§ 4034.4 Use of Mechanical Restraints.

(a) Mechanical means of physical restraint may be used only under the following circumstances:

(1) When transporting a person between locations.

(2) When a person's ~~history~~, present behavior, apparent emotional state, or other conditions present a reasonable likelihood that he or she may become violent or attempt to escape.

(3) When directed by medical staff, to prevent a person from attempting suicide or inflicting injury to himself or herself.

(b) Restraints shall not be:

(1) Used as punishment, retaliation or for disciplinary purposes.

(2) Placed around a person's neck.

(3) Applied in a way likely to cause undue physical discomfort or restrict blood flow or breathing; e.g., hog-tying.

(4) Used to secure a person to a fixed object except, as a temporary emergency measure. However, a person who is being transported shall not be locked in any manner to any part of the transporting vehicle.

(5) Used to lift a ward.

(c) When mechanical restraint is required, handcuffs, alone or attached to a waist chain, will be the means of restraint normally used. However, additional mechanical restraint, including leg irons, additional chains, ~~straight jackets~~, leather cuffs, or other specialized restraint equipment may be used when the circumstances indicate the need for the level of control that such devices will provide, **and when applied by custodial staff who have received training in the proper use of such devices.**

(d) Use of restraint equipment by direction of medical staff shall be fully documented in the institution medical file of the restrained ward.

(e) Only Division-approved restraints are authorized for use in a manner consistent with the manufacturer's instructions and this Use of Force Policy regarding the application and use of force.

NOTE: Authority cited: Sections 1712, Welfare and Institutions Code. Reference: Section 1752, Welfare and Institutions Code; and Sections 147, and 149, Penal Code.

§ 4036. Non-Lethal Chemical Agent Training.

An employee who is required to possess, use or transport chemical agents (tear gas, mace, etc.) or authorize the use thereof, shall complete a training course in non-lethal chemical agents.

NOTE: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Section 12403, Penal Code.

§4040. Use of Restraining Devices.

~~(a) An employee may use chemical and mechanical restraints for security purposes in parole and institutional operations. The use of these devices shall be limited to:~~

~~(1) Restraining a ward from engaging in activities or behavior that would endanger himself or others.~~

~~(2) Preventing serious destruction of property.~~

~~(b) Only reasonable and necessary force shall be used.~~

~~(c) (Reserved)~~

~~(d) An employee shall not use a chemical or mechanical restraint as punishment, retaliation, or for disciplinary purposes. A claim of an accidental discharge of a stun gun or chemical agent by an employee shall require full supporting justification.~~

~~(e) When transporting a ward, restraining equipment shall be used only when a potential threat exists; the ward's age, size, mental state and purpose of transfer shall be considered in making this determination.~~

~~(f) No physical restraints shall be used when a ward is being transported by public carrier, e.g., bus, plane, train, etc.~~

NOTE: Authority cited: Section 1712, Welfare and Institutions Code. Reference: Section 1752, Welfare and Institutions Code; Section 12403, Penal Code.